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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,906	01/14/2004	Chris Andre Du Plessis	10908/8 (MAJR)	3086
757	7590	07/11/2006	EXAMINER	
BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			WYSZOMIERSKI, GEORGE P	
			ART UNIT	PAPER NUMBER

1742

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/756,906	Applicant(s) DU PLESSIS, CHRIS ANDRE	
	Examiner George P. Wyszomierski	Art Unit 1742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 13-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 13-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The amendment and response filed June 22, 2006 has been entered.

Regrettably, a new ground of rejection must be applied against the instant claims, as set forth below.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 6, 13-15, and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Fass et al. (U.S. Patent 5,278,069).

Examples 8 and 9 and claim 1 of Fass disclose a process substantially identical to that as presently claimed. With regard to instant claim 6, the disclosure of Fass column 13, lines 59-65 is held to meet the presently claimed limitations. With regard to claims 13-15, note Fass column 13, lines 41-46. With regard to the “solid particles” recited in claim 17, line 4, the coal fly ash used in the prior art process meets this limitation of the invention. Thus, all aspects of the instant claims are held to be fully disclosed by Fass et al.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3-5, 7, 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fass et al.

Fass, discussed supra, does not specify the particular limitations as defined in the instant claims. However, the claimed invention is not patentably distinguishable from the prior art disclosure because:

a) With respect to claims 3 and 4, the repetition of known steps in a given process any number of times, to achieve nothing more than the cumulative effects thereof, is not seen as defining patentably over a prior art process including those steps. With regard to claim 5, note Fass column 13, lines 59-61.

b) With regard to claims 7 and 8, one of ordinary skill in the art would clearly desire to perform the presently claimed steps upon the separated cells in order to preserve them for future use, e.g. in order to reuse the cells in further separation processes.

c) With regard to claim 16, while Fass does not specify the concentration factor resulting from the membrane, clearly one would wish to concentrate the filtrate in the Fass process to as high a degree as practical.

Thus, the process as disclosed by Fass et al. is held to create a prima facie case of obviousness of the process as presently claimed.


6. The examiner agrees with Applicant that the claims of co-pending application 10/444,541 do not disclose forming a supernatant by a solid/liquid separation process, and separating or extracting microbial cells from the supernatant. Thus, the provisional obviousness-type double patenting rejection is withdrawn. However, the claims remain rejected for reasons as set forth supra.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Wyszomierski whose telephone number is (571) 272-1252. The examiner can normally be reached on Monday thru Friday from 8:00 a.m. to 4:30 p.m. Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King, can be reached on (571) 272-1244. All patent application related correspondence transmitted by facsimile must be directed to the new central facsimile number, (571)-273-8300. This new Central FAX Number is the result of relocating the Central FAX server to the Office's Alexandria, Virginia campus.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


GEORGE WYSZOMIERSKI
PRIMARY EXAMINER
GROUP 0700

GPW
July 7, 2006